

REMARKS/ARGUMENTS

This is intended to be a full and complete response to the Office Action dated June 17, 2004.

No Claims have been amended, added or canceled.

Rejections under 35 U.S.C. §102

Claims 1, 3, 5, 6, 9, 13, 15 and 16 stand finally rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Pat. No. 5,484,816 to Yanagida et al ("Yanagida"). Applicants respectfully traverse.

Applicant's present invention, as recited in pending claim 1, is directed to a physically stable shear thinning sprayable gel composition useful for delivering actives to skin comprising: a clay gelling agent; water; at least one water-miscible solvent; and at least one viscosity stabilizer selected from salts, acids and combinations thereof, wherein an amount of said at least one viscosity stabilizer contained in said composition ranges from about 0.01 percent to about 0.05 percent by weight, based on a total weight of said composition.

In this manner, independent claim 1 includes the limitations to the effect that

- a. the composition is a shear thinning sprayable gel composition;
- b. the composition contains a clay gelling agent, water, a water-miscible solvent and a viscosity stabilizer; and
- c. the viscosity stabilizer is selected from a salt, an acid and combinations thereof, with the amount of the stabilizer ranging from 0.01 to 0.05 percent by weight, based on the total weight of the gel composition.

The criticality of the percentage of salts or acid is clearly recited in the specification, "the tendency of the composition to form a rigid gel can be mitigated by the addition of salts or acid to the compositions. However if the concentration of salt is too high, the clay particles will flocculate, creating clustered particles, which will tend to precipitate out under the influence of gravity." (see the specification at page 9, lines 1-4).

Yanagida describes a variety of external skin treatment compositions including emulsions, gels, creams, lotions and cosmetic oil formulations in which the stability of Vitamin A is improved. It is the position of the Patent Office that examples 14-2 and 14-8 in the Yanagida reference anticipate claims 1, 3, 5, 6, 9, 13, 15 and 16. Applicants respectfully disagree with this position. Example 14-2 is identified as being an emulsion and example 14-8 is identified as being a cream. As is well known to those of ordinary skill in the art, neither an emulsion nor a cream can be considered to be a shear thinning sprayable gel composition. Accordingly, these examples cannot be considered to anticipate since they do not satisfy each and every element of the claimed invention.

Thus, Yanagida does not describe or suggest Applicant's invention as recited in claim 1 in which a sprayable gel composition comprises at least one viscosity stabilizer selected from salts, acids and combinations thereof, wherein an amount of said at least one viscosity stabilizer contained in said composition ranges from about 0.01 percent to about 0.05 percent by weight, based on a total weight of said composition. Rather, Yanagida only teaches gel compositions that include water-swellaable clays and various acids and salts that are present in a concentration much higher than the Applicant's claimed range. Thus, Applicant's invention as recited in amended claim 1 is patentable over Yanagida.

Rejections under 35 U.S.C. §103

Claims 4, 7, 8 and 17 are rejected under 35 U.S.C. §103(a) as being as being unpatentable over U.S. Pat. No. 5,484,816 to Yanagida et al ("Yanagida"). Applicants respectfully traverse.

The Examiner has applied Yanagida as above. Claims 4, 7, 8 and 17 depend from claim 1 and recite various limitations thereto. However, as discussed previously, Yanagida does not describe or suggest Applicant's invention as recited in claim 1 in which a sprayable gel composition comprises at least one viscosity stabilizer selected from salts, acids and combinations thereof, wherein an amount of said at least one viscosity stabilizer contained in said composition ranges from about 0.01 percent to about 0.05 percent by weight, based on a total weight of said composition. Rather, Yanagida only teaches compositions that include water-swelling clays and various acids and salts that are present in a concentration much higher than the Applicant's claimed range. Clearly there was no recognition within the cited reference as to the problem being addressed and thus it can offer no solution. There is nothing within the Yamagida reference to direct or motivate one of ordinary skill in the art to modify the amount of viscosity stabilizers in gel compositions containing clay gelling agents. Thus, Applicant's invention as recited in amended claim 1 is patentable over Yanagida. Accordingly, the Applicants respectfully request that this rejection be withdrawn.

Claim 14 is rejected under 35 U.S.C. §103(a) as being unpatentable over Yanagida in view of 4,543,251 to Kamishita ("Kamishita"). Applicants submit that claim 14 is not rendered obvious by this combination of references.

The Examiner applied Yanagida as above. However, the Examiner submits that Yanagida does not teach menthol or camphor of the instant claims. As such, the Examiner cites Kamishita for such teachings.

Kamishita teaches gel preparations prepared from diclofenac sodium. L-menthol may be added to impart a cool feeling to the skin (col. 3, lines 40-45).

Kamishita does not describe or suggest Applicant's invention as recited in claim 1 in which a sprayable gel composition comprises at least one viscosity stabilizer selected from salts, acids and combinations thereof, wherein an amount of said at least one viscosity stabilizer contained in said composition ranges from about 0.01 percent to about

0.05 percent by weight, based on a total weight of said composition. Rather, Kamishita only teaches using l-menthol to impart a cool feeling to the skin. Thus, Applicant's invention as recited in amended claim 1 is patentable over Kamishita. Furthermore, since Yanagida only teaches compositions that include water-swellaable clays and various acids and salts that are present in a concentration much higher than the Applicant's claimed range and Kamishita only teaches using l-menthol to impart a cool feeling to the skin, the combination of these references does not teach Applicant's invention. Thus, Applicants invention, as recited in claim 14 is patentable over this combination of references. Accordingly, the Applicants respectfully request that this rejection be withdrawn.

Conclusion

The applicants submit that none of the claims, presently in the application, is anticipated under the provisions of 35 U. S. C. § 102. Consequently, the applicants believe that all of the claims are presently in condition for allowance. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Mr. James P. Barr, at (732) 524-2826, so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

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